

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEVAR T. HENRY,
Plaintiff,

- against -

17-cv-3450 (JGK)

THE CITY OF NEW YORK, ET AL.,
Defendants.

ORDER

JOHN G. KOELTL, District Judge:

The day before trial, plaintiff's counsel produced a group of slides that plaintiff's counsel proposed to show to the jury during the opening statement. The group consisted of 21 slides. Of those slides, the defendants did not object to 3 slides: 1, 2, and 21.

After the defendants articulated their objections, which included showing exhibits to the jury that had not yet been admitted into evidence, the plaintiff withdrew its proffer of 8 plainly objectionable slides: 4, 5, 7, 10, 13, 16, 17, and 20.

Of the remaining slides, slide 15 is admissible. It allegedly depicts whether the defendants had admitted or denied that a strip search occurred. The defendants' objection that it unnecessarily refers to the City of New York is not well-founded because the chart does not even refer to the City of New York.

The remaining slides cannot be admitted. Slides 3, 9, and 18 show a map of the area and a purported timeline. The plaintiff says the map is only a demonstrative, but it appears


to be a demonstrative exhibit that the plaintiff says is fair and accurate. It should not be shown to the jury without an explanation of demonstrative evidence and of the purpose of demonstrative evidence, which is to explain other evidence in the case. Moreover, the map is so detailed and small that it would be of no use to the jury in the opening statement. Slides 11 and 12 show pictures of holding cells that the plaintiff says are simply being used as demonstratives, but saying so does not make it so. The exhibits are photographs of holding cells. Exhibits should not be shown to the jury before they are admitted into evidence, and it is not clear that these photos will be admitted into evidence or be used as acceptable demonstrative exhibits at trial. Exhibit 6 is a cartoon characterization of the defendants and serves no reasonable purpose to explain what the evidence will show. Exhibit 8 serves no reasonable purpose to explain the evidence by portraying each of the defendants with their shields when the plaintiff's point is that the three officers arrested the plaintiff in plain clothes. Exhibits 14 and 19 are argumentative and unnecessary to an explanation of what the plaintiff asserts the evidence in the case will show.

The parties are reminded that opening statements are not the place to argue a case to the jury. Rather, it is an opportunity to provide a concise summary to the jury of the

important facts that counsel expect the evidence to show or not to show.

SO ORDERED.

Dated: New York, New York
December 7, 2021



John G. Koeltl
United States District Judge